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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Petition for Waiver Filed by Oregon-Idaho Utilities, Inc. Concerning the Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules	)	AAD 93-20 96-45

To: Chief, Common Carrier Bureau

REQUEST FOR REMOVAL OF WAIVER CONDITION CONSISTENT WITH COMMISSION POLICY

Oregon-Idaho Utilities, Inc. ("OIU") submits this request for the removal of the "cap" on the Universal Service Fund ("USF") cost allocation support payments established by the Commission's Order adopted September 13, 1994, with respect to OIU's Nevada study area.[1] The Order authorized the transfer of local exchange facilities in Humboldt County, Nevada, from Nevada Bell to OIU, to be established as a new, separate study area. As a condition to the grant of the study area waiver, the Order imposed a limitation or "cap" on USF disbursements to the new Nevada study area of $381,768 per annum. Consistent with the overarching Commission policy conclusions now established by the Memorandum Opinion and Order on Reconsideration, released September 9, 1999,[2] OIU requests that its individual USF cap be removed, on a going-forward basis, as of January 1, 2000.

In addressing the petitions for waiver and reconsideration filed with respect to 32

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[1] Memorandum Opinion and Order, AAD 93-20, 9 FCC Rcd 5236 (1994) ("Order").

[2] Memorandum Opinion and Order on Reconsideration, AAD Nos. 93-93, 95-72, 95-30, 97-21, 97-23, 97-117, 98-44, 98-53, DA 99-1845, released September 9, 1999 ("Cap Removal Order").

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different study areas, the Bureau found in the Cap Removal Order that USF caps of unlimited duration could hinder the incentive and ability of USF recipients to extend and upgrade their local telephone service. Specifically, the Bureau determined that petitioners' caps, which had been in effect more than three years, should be removed.[3] The individual USF cap on OIU's Humboldt study area has been in effect more than three years and should be removed under the principles enunciated in the Cap Removal Order.

OIU expects that many other companies will also be seeking the removal of their individual USF caps consistent with the principles adopted in the Cap Removal Order. In order to avoid the administrative burden of repeatedly applying this new policy to a multitude of almost identical requests, OIU respectfully suggests that the Commission simply clarify, on its own motion, that its policy of removing individual USF caps that have been in effect for three or more years is applicable to all similarly-situated companies.

In the absence of this clarification, OIU respectfully requests expedited action in light of the consistency of this request with the recent policy conclusions and to accommodate the completion of the USF administration prior to January 1, 2000. In support thereof, OIU submits the following:

I. Background

In October of 1992, OIU entered into an agreement with Nevada Bell for the purchase of certain rural Nevada telephone exchange properties, which also included a small area located in Oregon but served from central office facilities in Nevada. On February 2, 1993, OIU and

[3] Cap Removal Order at ¶ 10.

Nevada Bell filed a joint petition for waiver of the frozen study area boundaries. On September 14, 1994, the FCC released its Order authorizing the transfer of six exchanges serving 578 access lines as a newly-created, separate study area, subject to the condition that the increase in USF payments that result from the upgrading of substandard facilities and the addition of approximately 230 access lines not exceed $381,768 per annum.[4]

The information that was utilized to produce the USF calculations incorporated as the cap in the Order, was, however, based on statewide Nevada Bell costs rather than upon exchange-specific cost data that would more accurately reflect the costs of the new, separate study area. The unavailability to OIU of reliable area-specific cost data was specifically discussed with the staff at the time of the data submission. The determination to utilize statewide Nevada Bell data was reached during a conference with staff prior to the submission of the data response, during which the expectation that the actual costs of the new study area would be higher than statewide Nevada Bell costs was also discussed. The limitations of this cost data were, however, overlooked when the calculations were incorporated into the Order.[5]

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[4] Order at ¶ 11.

[5] One apparent reason for the mixup was that prior to the September 14, 1994, Order, the Commission had only utilized a USF cap on one prior occasion, and that cap had a two-year expiration date. Further, in the course of discussing the USF calculations that utilized Nevada Bell statewide data, OIU had been informed that a USF cap limitation would not be contained in the Order. Unfortunately, this information was overlooked due to staff reassignment prior to issuance of the Order. Further compounding the mixup was that subsequent to the OIU data submission, the staff did receive exchange-specific cost information from Nevada Bell that was used to calculate the adjustment to Nevada Bell's price cap indices to reflect sale of the high-cost exchanges. This same exchange-specific data could have been used to calculate a more accurate USF estimate for the transferred exchanges, but it was not utilized in calculating the USF cap in the Order. OIU was not aware of the staff data request that caused Nevada Bell to calculate the exchange-specific cost data or of Nevada Bell's response until after the Order was released by

When the confusion and errors surrounding the calculations of the USF cap were discussed with staff following the issuance of the Order, the staff recommended that OIU wait until its own cost data was available following commencement of its operations and then petition the Commission for revision of the cap amount based upon cost information that would reflect actual, rather than hypothetical, costs of operating this new, separate study area.

In 1998, OIU renewed these discussions with the staff, due to its expectation that during 1999 the cap would for the first time begin to limit the USF funding for the new Nevada study area.[6] At that time OIU was also aware of a number of pending petitions to the Commission by other parties seeking removal and/or modification of USF caps that had been imposed in connection with exchange transfers by orders issued subsequent to the Order. OIU anticipated that the Commission's action on these pending petitions would affect the nature of the petition that OIU would file, and for that reason, OIU determined to await such Commission action. As anticipated, the Commission's action on the pending petitions has furnished the policy basis for granting the instant petition by OIU.

II. Removal of OIU's Cap is Consistent with Established Commission Policy

On September 9, 1999, the Commission issued its Cap Removal Order, addressing petitions for waiver and reconsideration of the USF conditions applied to 32 study areas. While the Commission noted its policy of monitoring USF impact on carriers involved in study area changes and capping carriers at some estimate of post-upgrade costs, the Commission correctly

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the Commission.

[6] The study area's 1999 USF requirement is $436,320, which is approximately $55,000 in excess of the cap in the Order.

concluded that limiting the duration of those caps is appropriate and in the public interest.[7] The Commission determined that USF caps that had been in effect more than three years "had served their purpose" and, accordingly, removed the caps on a going-forward basis.[8] As of January 1, 2000, the high cost loop support for the 32 study areas will thus be based upon the average cost of all their lines.

The Commission acknowledged that "caps of unlimited duration may hinder petitioners' incentive and ability to extend service to previously unserved areas, as well as to upgrade service to their existing customers."[9] The Commission also determined that "limiting the petitioners to the high cost loop support estimated in their original petitions, in perpetuity, is not necessary to accomplish the [Commission's] policies . . . ."[10] The Commission also recognized correctly that "lifting the caps on petitioners' high cost support will increase the affected LECs' incentives and ability to extend service to previously unserved areas and upgrade their networks."[11]

OIU's conditions are effectively identical to those petitioners addressed in the Cap Removal Order. The cap limitation on USF funding for OIU's Humboldt Nevada study area was established by the Commission's Order on September 13, 1994. This limitation has, thus, been in effect for five years. Under the three-year criterion established in the Cap Removal Order,

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[7] Cap Removal Order at ¶ 9.

[8] Cap Removal Order at ¶ 10.

[9] Id.

[10] Id.

[11] Id. See also Federal-State Joint Board on Universal Service: Promoting Development and Subscribership in Unserved Areas, Including Tribal and Insular Areas, Further Notice of Proposed Rulemaking, CC Docket No. 96-45, FCC 99-204 (rel. Sept. 3, 1999).

this USF cap should be removed, on a going-forward basis, effective January 1, 2000.

The USF cap limitation does adversely affect OIU's ability to provide service to previously unserved portions of its Nevada service territory and to upgrade its existing service facilities. By way of example of OIU's efforts in this area, the original service estimates cited in the Order anticipated growth in the Nevada service facilities from 578 lines to approximately 810 lines-- an increase of 37% in customers served. OIU's service facilities have, however, actually been expanded to serve 990 access lines, representing a 71% increase in lines served rather than the 37% increase that was reflected in the original cap estimate. This growth in service facilities has led to universal service funding requirements that already exceed the USF cap.[12] Further, substantial portions of the original Nevada Bell facilities are decades old and are in need of upgrades to modern service standards. Absent adequate universal service funding, OIU will not be able to maintain and upgrade its service facilities or to continue its policies of expanding its system to provide universal service to the presently-unserved residents of its extremely rural service area.

III. Conclusion

Consistent with the Commission's policy established in its Cap Removal Order, OIU requests that the individual USF cap established by the Commission's Order be removed as of January 1, 2000, on a going-forward basis. Adequate USF funding is necessary to allow OIU to continue to maintain and upgrade its facilities for the provision of universal service to its rural Nevada study area. Expedited grant of this request will serve the public interest by ensuring that

[12] The study area funding requirement for USF payments during 2000, based on data forwarded from USAC to the Commission, is $667,051.

OIU receives adequate universal service funding to recover the costs of its investment and thereby meet its current and future service requirements.

Respectfully submitted,

Oregon-Idaho Utilities, Inc.

By______________________________

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October 7, 1999

CERTIFICATE OF SERVICE

I, Shelley Davis, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, hereby certify that a copy of the foregoing "Request for Removal of Waiver Condition Consistent with Commission Policy" was served on this 7th day of October, 1999 by hand delivery to the following parties:

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In the Matter of Petition for Waiver Filed by Guadalupe Valley Telephone Cooperative, Inc. Concerning the Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules	)))))))	AAD 95-139

To: Chief, Common Carrier Bureau

CC: 96-45

REQUEST FOR REMOVAL OF WAIVER CONDITION CONSISTENT WITH COMMISSION POLICY

Guadalupe Valley Telephone Cooperative, Inc. ("Guadalupe Valley") submits this request for the removal of the "cap" on the Universal Service Fund ("USF") cost allocation support payments established by the Commission's Order adopted April 1, 1996, with respect to Guadalupe Valley's study area.[1] The Order authorized the transfer of local exchange facilities consisting of one exchange serving 342 access lines into Guadalupe Valley's existing study area. As a condition to the grant of study area waiver, the Order imposed a limitation or "cap" on USF disbursements to the Guadalupe Valley study area of $2,219,416 per annum. Consistent with the overarching Commission policy conclusions now established by the Memorandum Opinion and Order on Reconsideration, released September 9, 1999,[2] Guadalupe Valley requests that its individual USF cap be removed as of January 1, 2000.[3]

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[1] Memorandum Opinion and Order, AAD 95-139, 11 FCC Rcd 11477 (1996) ("Order").

[2] Memorandum Opinion and Order on Reconsideration, AAD 93-93, 95-72, 95-30, 97-21, 97-23, 97-117, 98-44, 98-53, DA 99-1845, released September 9, 1999 ("Cap Removal Order").

[3] Although this Request references an effective date of January 1, 2000, Guadalupe Valley does not waive its right to raise issues in the future with respect to the applicability of the

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Guadalupe Valley expects that many other similarly-situated companies will be seeking removal of their individual USF caps consistent with the Bureau's newly articulated policy conclusions. In order to avoid the administrative burden of repeatedly applying its new policy to a multitude of almost identical requests, Guadalupe Valley respectfully suggests that the Commission simply clarify, on its own motion, its policy by lifting the 57 remaining USF caps.

In the absence of this clarification, Guadalupe Valley respectfully requests expedited action in light of the consistency of this request with the recent policy conclusions and to accommodate the completion of the USF administration prior to January 1, 2000. In support thereof, Guadalupe Valley submits the following:

I. Background

On September 20, 1995, Guadalupe Valley and six other companies filed a joint petition for waiver of the frozen study area boundaries. On April 2, 1996, the FCC released its Order authorizing the removal of exchanges from the Contel and GTE Texas study areas and allowing Guadalupe Valley and the other six companies to consolidate their acquired exchanges within their respective existing Texas study areas. Guadalupe Valley was authorized to transfer one exchange serving 342 access lines into its existing study area subject to the condition that, absent explicit approval from the Bureau, the annual USF support provided to the existing study area would not exceed the estimated post-upgrade amount of $2,219,416, specified in the joint petition.[4] The National Exchange Carrier Association ("NECA") was ordered not to distribute

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Commission's policy or rules to prior periods beginning May 8, 1997.

[4] Order at ¶ 20.

USF payments exceeding the limitation.

In the Order, the Bureau also acknowledged appropriately that

> new USF rules, implementing new statutory mandates, are likely to alter the distribution of USF support to high-cost areas and require us to revisit these issues following implementation of the 1996 Act.[5]

Although Guadalupe Valley was aware in 1995 that the facilities to be purchased were substandard, and that the Bureau would likely impose a limit on USF recovery, Guadalupe Valley, nevertheless, fully expected that a rational network cost recovery application would be ultimately resolved consistent with the public interest.[6] Guadalupe Valley believed that rational cost recovery would be possible by removal of the limit or the implementation of a new USF plan, under which the reasonable high costs would be addressed. The Guadalupe Valley study area's 2000 USF receipts, based on data forwarded from the Universal Service Administrative Corporation ("USAC") to the Commission on October 1, 1999, would be $3,049,692.12. Grant of this request will allow Guadalupe Valley to recover fully the USF payments related to the costs incurred in providing service to rural Texas.

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[5] Id.

[6] Since acquiring the Waelder exchange from GTE in 1996, Guadalupe Valley has made approximately $350,000 in upgrades and access lines have grown from 342 in 1996 to 394 at the end of 1998. In addition, Guadalupe Valley has invested approximately $33 million since 1996 to upgrade facilities serving its other 31, 000 subscribers.

II. Removal of Guadalupe Valley's Cap is Consistent with Established Commission Policy

On September 9, 1999, the Commission issued its Cap Removal Order, addressing petitions for waiver and reconsideration of the USF conditions applied to 32 study areas. While the Commission noted its policy of monitoring USF impact on carriers involved in study area changes and capping carriers at some estimate of post-upgrade costs, the Commission correctly concluded that limiting the duration of those caps is appropriate and in the public interest.[7] Accordingly, the Commission granted petitioners' requests to lift the individual caps placed on their high cost loop support on a going-forward basis.[8] As of January 1, 2000, the high cost loop support for the 32 study areas will then be based upon the average cost of all their lines.

The Commission acknowledged that "caps of unlimited duration may hinder petitioners' incentive and ability to extend service to previously unserved areas, as well as to upgrade service to their existing customers."[9] The Commission also determined that "limiting the petitioners to the high cost loop support estimated in their original petitions, in perpetuity, is not necessary to accomplish the [Commission's] policies . . ." The Commission "concluded that . . . the individual caps placed on the carriers' high cost loop support have served their purpose . . ."[10] The Commission also recognized correctly that lifting the caps on petitioners' high cost support will increase the affected LECs' incentives and ability to extend service to previously unserved

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[7] Cap Removal Order at ¶ 9.

[8] Cap Removal Order at ¶ 10.

[9] Id.

[10] Id.

areas and upgrade their networks."[11]

Guadalupe Valley's conditions are effectively identical to those petitioners addressed in the Cap Removal Order. Therefore, removal of Guadalupe Valley's individual USF cap is both warranted by, and consistent with, the Commission's conclusions and policy enunciated in the Cap Removal Order. Like the petitioners addressed in that order, Guadalupe Valley purchased an exchange several years ago and, in conjunction with its request for study area waiver, provided a reasonable estimate of the costs to upgrade the subject facilities for the provision of basic telephone service to existing and new customers. Since acquiring the Waelder exchange from GTE in 1996, Guadalupe Valley has made approximately $350,000 in upgrades and access lines have grown from 342 in 1996 to 394 at the end of 1998. Continuing to limit Guadalupe Valley to the high cost loop support estimated in its original petition is not necessary to accomplish the Commission's policies. Further, continued application of the individual cap imposed in February of 1997 will hinder Guadalupe Valley's incentive to continue to invest in advanced services networks, to upgrade existing service, and to maintain reasonably comparable rates for modern services.

III. Conclusion

Consistent with the Commission's policy established in its Cap Removal Order, Guadalupe Valley requests that the individual USF cap established by the Commission's Order be removed as of January 1, 2000. The Guadalupe Valley study area's 2000 USF receipts, based

[11] Cap Removal Order at ¶ 10. See also Federal-State Joint Board on Universal Service: Promoting Development and Subscribership in Unserved Areas, Including Tribal and Insular Areas, Further Notice of Proposed Rulemaking, CC Docket No. 96-45, FCC 99-204 (rel. Sept. 3, 1999).

on data forwarded from USAC to the Commission on October 1, 1999, would be $3,049,692.12. Accordingly, Guadalupe Valley requests that the Commission lift the individual cap placed on its high cost loop support on a going-forward basis so that, as of January 1, 2000, Guadalupe Valley's high cost loop support payments will be based upon the average cost of all its lines. Adequate USF funding is necessary to allow Guadalupe Valley to continue to maintain and upgrade its facilities for the provision of universal service to its rural Texas study area. Expedited grant of this request will serve the public interest by ensuring that Guadalupe Valley receives adequate universal service funding to recover the costs of its investment and thereby meet its current and future service requirements.

Respectfully submitted,

Guadalupe Valley Telephone Cooperative, Inc.

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CERTIFICATE OF SERVICE

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